Filed 8/25/04 Paul J. v. Sup. Ct. CA5

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

PAUL J.,

Petitioner,

v.

THE SUPERIOR COURT OF STANISLAUS COUNTY,

Respondent,

STANISLAUS COUNTY COMMUNITY SERVICES AGENCY,

Real Party In Interest.

F045675

(Super. Ct. No. JUV 506888)

O P I N I O N

THE COURT*

ORIGINAL PROCEEDINGS; petition for extraordinary writ review. Donald E. Shaver, Judge.

Tim Bazar, Public Defender, and Kimberly C. Ayers, Deputy Public Defender, for Petitioner.

No appearance for Respondent.

Michael H. Krausnick, County Counsel, and Linda S. Macy, Deputy County Counsel, for Real Party In Interest.

*Before Harris, Acting P.J., Cornell, J., and Dawson, J.

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Petitioner seeks an extraordinary writ (Cal. Rules of Court, rule 39.1B) to vacate the orders of the juvenile court terminating reunification services and setting a Welfare and Institutions Code section 366.26 hearing.[1] We will deny the petition.

STATEMENT OF THE CASE AND FACTS

The instant writ petition arises from the juvenile court's termination of reunification services at the contested six-month review hearing in the case of petitioner's two-year-old daughter J. Petitioner and Ruby,[2] J.'s mother, were offered a variety of reunification services. However, this case clearly turns on one particular requirement of petitioner's case plan—i.e., completion of a drug abuse assessment and recommended treatment. Therefore, we will focus our factual presentation and discussion accordingly.

Petitioner and Ruby are admitted marijuana users with a significant history of domestic violence and transience. In November 2002, while living in Mariposa County, they were engaged in a physical fight when petitioner accidentally struck then seven-month-old J. Child Protective Services (CPS) investigated the incident but did not remove J. because petitioner and Ruby stated they were moving to Texas and would seek counseling. Five months later, CPS in Mariposa County substantiated a referral that petitioner and Ruby had 15 domestic violence disputes in 15 months involving the Mariposa County Sheriff's office. The couple agreed to accept voluntary services.

However, instead of participating in services, petitioner and Ruby moved to Tuolumne County where CPS received a referral in July 2003 that petitioner was smoking marijuana with a ten-year-old neighbor boy. Petitioner told the social worker

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1 All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

2 Ruby also filed an extraordinary writ petition from the instant dependency proceedings in this court's case No. F045687.

that the ten year old supplied the marijuana. The family was offered but refused voluntary services.

The instant dependency proceedings were initiated in August 2003 when then two-year-old J. was knocked to the ground during a physical fight between petitioner and Ruby. The Tuolumne County Department of Social Services took J. into protective custody and filed a dependency petition on her behalf, alleging petitioner and Ruby's marijuana use and domestic violence placed J. at risk of physical and emotional harm. (§ 300, subds. (b) & (c).) On October 14, 2003, both parents appeared before the Tuolumne County Juvenile Court and submitted on the petition. Sometime thereafter, they moved to Stanislaus County. Their case was transferred to the Stanislaus County Juvenile Court and the matter was set for disposition.

The dispositional hearing was continued several times and conducted on January 12, 2004. The juvenile court declared J. a dependent of the court and ordered reunification services for both parents. Petitioner's case plan required him to complete a parenting course, complete domestic violence and substance abuse assessments and follow any recommended treatment and submit to random drug testing. The court set the six-month review hearing for May 6, 2004.

During the months following disposition, petitioner and Ruby were homeless and transient within Stanislaus County. They also separated and reunited many times between January and May 2004. On a monthly basis, the social worker offered them a referral to a clean and sober living environment and explained that by going to such a structured facility, it would be easier to place J. with them for an extended visit. Petitioner and Ruby repeatedly declined the offers.

On January 29, 2004, Ruby completed a substance abuse assessment. However, because she had an authorization for medicinal use of marijuana and denied using any other drugs, the evaluator did not recommend any drug treatment. In early February 2004, during one of the couple's separations, petitioner reported to the social worker that

Ruby was using "crank." She was drug tested and the results were positive for marijuana and methamphetamine. She was referred for another substance abuse assessment but did not complete it until May 26, 2004.

Petitioner was even less compliant with the drug assessment requirement of his case plan. He missed five drug assessment appointments from November 2003 to April 2004 and also waited until May 26, 2004, to complete a drug assessment. He was asked to drug test once during the six months under review. He did and it was positive for marijuana.

On May 27 and June 1, 2004, the court conducted a continued contested six-month review hearing on the agency's recommendations to terminate reunification services for petitioner and Ruby and set the matter for a section 366.26 hearing. The caseworker and both parents testified.

The caseworker testified that petitioner and Ruby were participating in their parenting and domestic violence classes. However, their transience made it difficult to contact them for drug testing.

Petitioner testified that he was employed and that he and Ruby were living in a house and sharing the rent with a friend. He did not have the report from his drug assessment to enter into evidence. However, he testified that the evaluator recommended he complete an intensive outpatient drug treatment program. When asked why he declined to move into the clean and sober living facility, he stated he stopped using marijuana and he wanted to prove he could provide for his family on his own.

Ruby testified and denied using methamphetamine. She explained that, at the time she tested positive for methamphetamine, she was living in a house with people who smoked methamphetamine and snorted it from the spoons and dishes. She believed she ingested enough smoke in the ambient air and from washing their dishes and spoons to produce a positive drug result. She did not have a drug assessment report and recommendation to enter into evidence.

At the conclusion of the hearing, the court found it would be detrimental to return J. to petitioner and Ruby's custody. The court further found petitioner and Ruby were provided reasonable services and, though they made limited progress, they did not regularly participate in or make substantive progress in their court-ordered treatment programs. In making its findings, the court commented that petitioner's marijuana habit was serious and that he allowed six months to lapse without making any real progress. As to Ruby, the court found her testimony unbelievable and concluded she was in serious denial regarding her drug abuse. As to both, the court found there was not a substantial likelihood J. would be returned to their custody if services were continued for another six months. Accordingly, the court terminated reunification services and set the matter for a section 366.26 hearing. This petition ensued.

DISCUSSION

The juvenile court properly terminated reunification services.

At the six-month review hearing, the juvenile court may terminate reunification services and schedule a permanency planning hearing where the child, on the date of removal, was under the age of three years and the court further finds, by clear and convincing evidence, the parent failed to participate regularly and make substantive progress in the court-ordered plan. (§ 366.21, subd. (e).) If, however, the court finds there is a substantial probability that such a child may be returned to parental custody within six months or that reasonable services were not provided, the court must continue the case to the 12-month permanency hearing. (*Ibid*.)

Services are reasonable if the supervising agency identified the family's problems, offered services targeting those problems, maintained reasonable contact with the offending parent(s), and made reasonable efforts to assist in areas where compliance was difficult. (*In re Riva M*. (1991) 235 Cal.App.3d 403, 414.) Further, in order to find a substantial probability of return, the court must find all of the following:

> "(A) That the parent … has consistently and regularly contacted and visited with the child.
>
> "(B) That the parent … has made significant progress in resolving problems that led to the child's removal from the home.
>
> "(C) The parent … has demonstrated the capacity and ability both to complete the objectives of his or her treatment plan and to provide for the child's safety, protection, physical and emotional well-being, and special needs." (§ 366.21, subd. (g)(1).)

We review the juvenile court's order terminating reunification services for substantial evidence, resolving all conflicts in favor of the court and indulging in all legitimate inferences to uphold the court's finding. (*In re Brison C*. (2000) 81 Cal.App.4th 1373, 1378-1379.)

Petitioner argues he completed virtually every component of his case plan, including his drug abuse assessment and therefore the court erred in finding he failed to regularly participate in and make substantive progress in his court-ordered plan. In fact, the reverse is true. Petitioner did not complete any of his case plan requirements. The juvenile court did make it clear that it viewed his progress in its totality and favorably considered his participation in domestic violence counseling and parenting classes. However, the court considered drug treatment a priority in petitioner's case and concluded his postponement of his substance abuse evaluation until the day before the six-month review hearing evidenced his failure to regularly participate and make substantive progress in his case plan. We agree.

Petitioner further argues he was not provided reasonable services because he was not allowed couple counseling until his domestic violence assessment was completed on April 7, 2004, and because he was not drug tested. According to the record, the domestic violence counselor recommended petitioner and Ruby defer couple counseling until they could decide whether they would remain married. With respect to drug testing, the juvenile court expressly stated it did not use the failure to drug test as a negative factor in assessing petitioner's progress. To the extent he is arguing that the agency's failure to

drug test him deprived him the opportunity to demonstrate his commitment to attain sobriety, he could have demonstrated that by completing his substance abuse assessment and initiating treatment much earlier in the reunification period. Based on the foregoing, we conclude petitioner was provided reasonable services.

Finally, petitioner argues the evidence supports a substantial probability of return because he regularly visited J., he made substantial progress in his case plan and he could complete his plan within another six months. We conclude petitioner's failure to complete his substance abuse assessment until the day before the six-month review hearing provides sufficient evidence that petitioner failed to make significant progress and therefore that there was not a substantial probability J. could be returned to his custody within another six months. We find no error in the juvenile court's order terminating reunification services.

DISPOSITION

The petition for extraordinary writ is denied. This opinion is final forthwith as to this court.